

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Noah Kim	Team: Squad #8	CCRB Case #: 201908013	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Sunday, 09/08/2019 4:30 PM	Location of Incident: Bronx Terminal Market [Shopping Center]	Precinct: 44	18 Mo. SOL 3/8/2021	EO SOL 10/23/2021	
Date/Time CV Reported Tue, 09/10/2019 4:32 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Tue, 09/10/2019 4:32 PM		

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

Witness(es)	Home Address
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. POM Kevin Cox	07108	938279	046 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Kevin Cox	Abuse: PO Cox damaged § 87(2)(b)'s property.	[REDACTED]
B.POM Kevin Cox	Abuse: PO Cox refused to provide his shield number to § 87(2)(b)	[REDACTED]

Case Summary

On September 10, 2019, § 87(2)(b) filed the following complaint as a reporting non-witness on behalf of her son, § 87(2)(b) with the CCRB via phone.

On September 8, 2019, at approximately 4:30 p.m., § 87(2)(b) was riding his bicycle with a group of friends outside of the Subway restaurant in the parking garage of Bronx Terminal Market. § 87(2)(b) and his friends were approached by Police Officer Kevin Cox of the 46th Precinct and five mall security guards. PO Cox walked up to § 87(2)(b) struck his bicycle twice in the spokes of the wheel with his asp, and stepped on the spokes of the wheel once with his foot (**Allegation A: Abuse of Authority;** § 87(2)(g) § 87(2)(b) allegedly requested PO Cox's shield number, which PO Cox allegedly did not provide. (**Allegation B: Abuse of Authority;** § 87(2)(g) § 87(2)(b)).

Security footage of the incident from the Bronx Terminal Market was obtained by the CCRB [BR01]. Cell phone footage taken by § 87(2)(b)'s friend was obtained by the CCRB [BR02]. PO Cox stated that he was not equipped with a body-worn camera during the incident.

Findings and Recommendations

Allegation (A) Abuse of Authority: At Bronx Terminal Market, Police Officer Kevin Cox damaged § 87(2)(b)'s property.

It is undisputed that PO Cox damaged § 87(2)(b)'s property at Bronx Terminal Market.

Security camera footage from Bronx Terminal Market captures the incident. Between 2:20 and 2:52 minutes, PO Cox walks out of the parking garage flanked by five mall security guards. § 87(2)(b) is straddling his bicycle and standing in front of his friends. PO Cox grabs the seat of § 87(2)(b)'s bicycle with his left hand, takes out his asp with his right hand and hits the spokes of the back wheel of § 87(2)(b)'s bicycle twice. PO Cox then takes his right foot and steps down on the spokes of the back wheel of § 87(2)(b)'s bicycle [BR01].

Cell phone footage taken by § 87(2)(b)'s friend § 87(2)(b) (last name unknown) was provided by § 87(2)(b) during his in-person interview. At 0:12 seconds, PO Cox and five mall security guards walk towards § 87(2)(b) and his friends from the parking garage inside of Bronx Terminal Market. Between 0:51 and 0:59 seconds, PO Cox uses his asp to hit the back wheel of § 87(2)(b)'s bicycle twice [BR02].

§ 87(2)(b) testified that he and his friends stopped and waited outside of the entrance of the parking garage at Bronx Terminal Market in order to obtain PO Cox's information after PO Cox and a group of mall security guards had told them to leave the area. PO Cox walked up to § 87(2)(b) who was standing still, straddling his bicycle. PO Cox grabbed § 87(2)(b)'s bicycle seat, took out his asp, and hit the spokes in the back wheel of § 87(2)(b)'s bicycle 2-3 times. PO Cox then grabbed § 87(2)(b)'s left arm and said to § 87(2)(b) that he had told him and his friends to leave. PO Cox then continued to hit § 87(2)(b)'s bicycle with his asp until two of the spokes broke. PO Cox subsequently stepped on the brake disc (a bicycle piece connected to the back wheel) of the bicycle with his foot, breaking the piece [BR03].

§ 87(2)(b) and § 87(2)(b) security guards at Bronx Terminal Market, testified that when they approached § 87(2)(b) and his friends for the second time in the area outside of the parking garage, § 87(2)(b) and his friends cursed at PO Cox and the security guards. § 87(2)(b) and § 87(2)(b) testified that PO Cox took out his asp

and hit § 87(2)(b)'s bicycle in the back-wheel area. The three security guards all stated that they did not see PO Cox step on § 87(2)(b)'s bicycle [BR04-BR06].

PO Cox testified that he was working on paid detail at Bronx Terminal Market and was called by the security department at the mall who stated that a group of kids on bicycles outside of the Subway restaurant were blocking the entrance, refusing to leave, riding their bicycles around, and harassing customers. PO Cox had not interacted with these kids (determined through the investigation to be § 87(2)(b) and his friends) before. After telling § 87(2)(b) and his friends that they needed to leave outside of the Subway restaurant, PO Cox and four mall security guards approached the group of kids between the entrance of the parking garage and the street outside Applebee's restaurant. PO Cox walked up to § 87(2)(b) took out his asp, and hit the spokes in the back wheel of § 87(2)(b)'s bicycle 3-4 times. PO Cox proceeded to step on the spokes of the back wheel of the bicycle once. PO Cox testified that he did this to disable the bicycle so that he did not have to follow § 87(2)(b) and his friends around. PO Cox did not believe there was any visible damage done to § 87(2)(b)'s bicycle. PO Cox stated that he did not summons § 87(2)(b) and his friends because he believed that they were under 16 years old. PO Cox stated that he did not want to arrest § 87(2)(b) and his friends or take their bicycles because he believed that would have resulted in a physical altercation. PO Cox furthered that it would have been impossible to arrest all of them since he was the only police officer on scene [BR07].

In *Onderdonk v. State*, 170 Misc. 2d 155 (1996), the court ruled that police officers can damage property only if doing so is reasonably necessary to carry out their duties [BR08].

Patrol Guide procedure 203-10 states a police officer is prohibited from engaging in conduct prejudicial and discourteous to good order [BR09].

§ 87(2)(g)

[REDACTED]

Allegation (B) Abuse of Authority: At Bronx Terminal Market, Police Officer Kevin Cox refused to provide his shield number to § 87(2)(b)

§ 87(2)(g)

§ 87(2)(b) testified that he requested PO Cox's "badge number" after PO Cox hit and stepped on his bicycle, but PO Cox ignored him. § 87(2)(b) made this request a total of three times. PO Cox was approximately eight inches away from § 87(2)(b) when he made these requests. § 87(2)(b)'s friend told § 87(2)(b) to look at PO Cox's name tag so § 87(2)(b) could get his name. § 87(2)(b) saw that the name tag said "Cox" on it, but he was not able to read PO Cox's shield number [BR03].

§ 87(2)(b) and § 87(2)(b) security guards at Bronx Terminal Market, all testified that they did not hear § 87(2)(b) request PO Cox's shield number. [BR04-BR06].

PO Cox testified that after he hit and stepped on § 87(2)(b)'s bicycle, § 87(2)(b) asked him for his shield number. PO Cox told § 87(2)(b) that it was "right here and easy to remember." PO Cox indicated the place where his shield number was by pointing at it. PO Cox was a couple of feet away from § 87(2)(b) during this interaction. § 87(2)(b) did not say he could not see or read his shield number [BR07].

Security camera footage from Bronx Terminal Market shows the incident outside of the entrance of Bronx Terminal Market but does not provide any audio. At 2:55 minutes, PO Cox points at his badge on his left chest area in response to something § 87(2)(b) says to him. PO Cox and § 87(2)(b) are approximately two feet from each other during the interaction [BR01].

§ 87(2)(b) testified that he requested PO Cox's shield number and he did not provide it [BR03]. PO Cox testified that § 87(2)(b) requested PO Cox's shield number and he provided it [BR07]. The three security guards at Bronx Terminal Market testified that they did not hear § 87(2)(b) request PO Cox's shield number. They did not see PO Cox gesture at his shield number [BR04-BR06]. Security footage from Bronx Terminal Market showed PO Cox point at his shield in response to something § 87(2)(b) said to him. There was no audio in the security footage, so it was not possible to verify what was said during the footage [BR01].

§ 87(2)(g)
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Civilian and Officer CCRB Histories

- This is the first CCRB complaint § 87(2)(b) has been party to [BR10].
- PO Cox has been a member of service for 14 years. In that time, he has been the subject of 36 allegations in 16 cases, five of which were substantiated.
 - CCRB 201407232 contained an allegation of other misconduct noted which were substantiated and resulted in an NYPD disposition of command level instructions.
 - CCRB 201805031 contained an allegation of abuse of authority and three allegations of discourtesy, all of which were substantiated awaiting NYPD disposition [BR11].
- During his interview, PO Cox stated that he had been suspended (and lost \$7,000 in pay) as a result of the incident. A resnick request for any internal police investigation into this incident was submitted and is still pending. The results of this request will be added to the case file.

Mediation, Civil and Criminal Histories

- § 87(2)(b) declined to mediate this complaint [BR03].
- A FOIL request was sent to the New York City Office of the Comptroller for § 87(2)(b) regarding the incident on September 8, 2019 is pending [BR12].
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
[REDACTED]
[REDACTED]

Squad No.: _____

Investigator: _____
Signature Print Title & Name Date

Squad Leader: _____
Signature Print Title & Name Date

Reviewer: _____
Signature Print Title & Name Date